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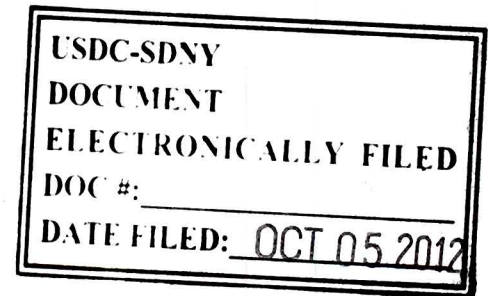
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MEMO ENDORSED

October 1, 2012

VIA E-MAIL (Abrams\_NYSDChambers@nysd.uscourts.gov)

Honorable Ronnie Abrams  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, New York 10007



Re: **Capitol Records, LLC et al. v. Vimeo, LLC, et al. - Case No. 09-CV-10101**  
**EMI Blackwood Music, Inc. et al. v. Vimeo, LLC, et al. - Case No. 09-CV 10105**

Dear Judge Abrams:

In light of the Parties' currently ongoing briefing on their cross-motions for Summary Judgment/Partial Summary Judgment, the Parties submit this letter and proposal to address the filing of documents designated by Defendants Vimeo, LLC and Connected Ventures (collectively, "Defendants") as "Confidential" pursuant to the Court's Protective Order Regarding Disclosure of Confidential Information (the "Protective Order"), entered by Judge Castel on June 1, 2010 (ECF Nos. 26, 27).

By way of background, this action (the "Action") comprises two consolidated lawsuits for copyright infringement and related claims. On April 22, 2010, the Court (Judge Castel presiding) ordered that the Action proceed in two phases, with Phase I addressing Defendants' defense under Section 512 of the Digital Millennium Copyright Act ("DMCA"), and Phase II addressing all remaining issues. (ECF No. 24.) On June 11, 2012, the Court ordered a briefing schedule on the Parties' cross-motions for partial summary judgment on Defendants' DMCA defense. (ECF No. 45.) Pursuant to the briefing schedule, Defendants' Motion was filed on September 7, 2012. Plaintiffs are required to file their initial papers in support of their motion for partial summary judgment and in opposition to Defendants' motion for summary judgment ("Plaintiffs' Motion") on October 12, 2012. Defendants' consolidated Opposition and Reply and Plaintiffs' Reply will be filed on November 16, 2012, and December 21, 2012, respectively.

In support of their October 12, 2012 and December 21, 2012 filings, Plaintiffs intend to rely on numerous documents produced by Defendants, along with portions of deposition transcripts, designated by Defendants as "Confidential." Plaintiffs expect to include and rely on a large volume of such "Confidential"-designated documents (likely several hundred documents).

**MITCHELL SILBERBERG & KNUPP LLP**

Honorable Ronnie Abrams  
October 1, 2012  
Page 2

Plaintiffs do not intend or desire to file under seal any documents produced by Plaintiffs in the Action.

The Parties acknowledge Your Honor's rules concerning the filing of documents under seal (as set forth in this Court's Individual Practice Rule 4(a)), which include the submission of a specific request for filing under seal explaining the reasons for the under seal filing, accompanied by a full set of materials to be redacted or filed under seal. However, given (1) the magnitude of the documents involved and (2) the fact that such documents were designated by Defendants (rather than Plaintiffs) as "Confidential," Plaintiffs submit that it would be impracticable to provide the Court with all "Confidential" documents they intend to file with an explanation as to why each is so designated in advance of the October 12 deadline. Additionally, the Parties agree that to fully evaluate the need for under seal filing of any documents relied on by Plaintiffs, it will be most efficient for Defendants to have the opportunity to review Plaintiffs' entire submission before the issue of under seal filing is raised with the Court.

Accordingly, the Parties respectfully request that Your Honor order that the following procedure regarding the use of Confidential information be in effect for the remainder of the above-outlined briefing schedule:

- Plaintiffs will serve their Motion and Reply (and all supporting documents) on October 12 and December 21, 2012, respectively. Plaintiffs will provide unredacted versions of their Motion and Reply (and all supporting documents) to the Court's chambers no later than the following business day, but will not file any materials with the ECF system.
- Defendants will review Plaintiffs' submissions and determine whether there is a need to seek permission from the Court to file certain documents under seal. To the extent that Defendants determine that an under seal filing is necessary, within 15 days of Defendants' receipt of Plaintiffs' submissions, Defendants shall submit a request for filing under seal and the required materials pursuant to the Court's Individual Practice Rule 4(a).
- Following the Court's order on Defendants' request for filing under seal (or Defendants' confirmation that the submitted materials may be filed publicly), Plaintiffs will file their Motion/Reply and any supporting documents on the Court's ECF system.<sup>1</sup>

The Parties are in agreement that this proposal will balance their needs with the Court's interest in limiting the quantity of material filed under seal. The proposed procedure is one that has been previously approved by Judge Castel in the action Louis Vuitton Malletier v. Hyundai Motor America, Case No. 10 CV 1611 (PKC) (ECF No. 42).

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<sup>1</sup> The procedure outlined above shall also apply to Defendants' consolidated Opposition/Reply brief (and supporting materials) due November 16, 2012.

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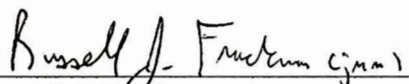
Honorable Ronnie Abrams  
October 1, 2012  
Page 3

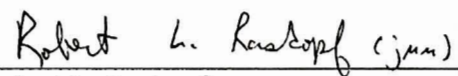
The Parties submit that the procedure is equitable and will not delay the disposition of the Action or create unnecessary burden for the Court or the Parties.

Respectfully submitted,

MITCHELL SILBERBERG & KNUPP LLP

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& SULLIVAN, LLP

  
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Counsel for Plaintiffs

  
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Robert L. Raskopf  
Counsel for Defendants

RJF/app

10/5/12

The parties' proposal is approved.

SO ORDERED.

  
USDJ